

Before the
Federal Communications Commission
Washington, D. C. 20554

JUN 16 1994

In the Matter of)
)
Implementation of Sections 3 (n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)

COMMENTS OF AMERITECH
ON
PETITIONS FOR RECONSIDERATION

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Dated: June 16, 1994

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Several parties filed Petitions For Reconsideration urging the Commission to abandon its efforts, pursuant to a congressional mandate, to fashion a comprehensive framework for even-handed regulation of all mobile telecommunications services. These parties attempt to craft narrow exceptions which would favor their specific segments of the wireless service marketplace. The Commission should reject these suggestions, as discussed below.

I. No "small entity" exception should be adopted

Arguing for special treatment of "the typical, capacity-limited private carrier such as the traditional SMR operator or the newly created 220 MHz local, commercial licensee"², AMTA seeks a specialized niche exemption from the Commission's CMRS framework. Adoption of AMTA's suggestion that the Commission exempt carriers meeting the Small Business Administration's definition of a "small entity" would defeat the very purpose of this proceeding. As

² Petition of the American Mobile Telecommunications Association, Inc. ("AMTA"), at 5.

noted in the Commission's Second Report and Order, "Congress has replaced traditional regulation of Mobile Services with an approach that brings all mobile service providers under a comprehensive, consistent regulatory framework... ." ³ Although AMTA states that it is "convinced that the congressional focus was on the prospective functional equivalency of ESMR, cellular and PCS," ⁴ no such limitations can be found in either the legislative record or the Commission's actions in this matter to date. AMTA's overt request for special treatment should be denied.

II. No "dominant carrier" exception should be engrafted onto the CMRS rules

Seeking reconsideration of the Commission's decision to forbear from requiring CMRS providers to file tariffs, MCI repeats its time-worn arguments for imposing artificial handicaps upon its competitors. Arguing yet again that "dominant carriers providing CMRS ... possess both the ability and incentive to shift costs between (detariffed) 'CMRS access' and (tariffed) 'LEC access' offerings" ⁵, MCI argues that dominant carriers should be required to file tariffs, as well as intercarrier contracts. ⁶ Despite MCI's veiled threat of appeal, the Commission should reject this request for special treatment as well. ⁷

³ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket 93-252, Second Report and Order (adopted February 3, 1994), at 7 (para. 12).

⁴ Petition of AMTA, at 5.

⁵ Petition of MCI, at 10.

⁶ Petition of MCI, at 10 and 13. Although no specific definition for the term "dominant carriers" is offered by MCI, presumably its definition would not be sufficiently broad to apply to Nextel, the target of MCI's pending acquisition efforts.

⁷ See, e.g., Comments of MCI at 8, alleging that the Commission's Order "is a material violation of the Administrative Procedures Act and fundamental principals of due process."

III. No new discovery right should be created

Regarding the balance between Federal and state/local regulation of CMRS providers, the Commission has noted that "(t)he statute preempts state and local rate and entry regulation of all commercial mobile radio services, effective August 10, 1994."⁸ Arguing in its Petition for Reconsideration that "as a result access to information may be difficult to obtain,"⁹ PaPUC "requests that provision be specially made in the FCC rules for state access to the information required ... to assess market conditions... ." ¹⁰ Neither need nor justification for such a mechanism has been advanced.¹¹ This request for special discovery powers should be rejected.

IV. Conclusion

For the foregoing reasons, these requests for the creation of niche exceptions to the Commission's comprehensive CMRS regulatory framework should be rejected.

Respectfully submitted,

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⁸ Second Report and Order, at 91 (para. 240).

⁹ Petition of Pennsylvania Public Utility Commission ("PaPUC"), at 6.

¹⁰ Ibid.

¹¹ PaPUC's request follows only general discussion of the statute's legislative history and "well established principles of statutory construction." Ibid., at 2.

CERTIFICATE OF SERVICE

I, Kimberly M. Gurrieri, do hereby certify that a copy of the foregoing pleading has been served on all parties by first class mail, postage prepaid, on this 16th day of June 1994.

Kimberly Gurrieri/Hra
Kimberly M. Gurrieri